**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 14172 of 2005**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**PRABHUBHAI P PATEL & 1 - Petitioner(s)**
**Versus**
**STATE OF GUJARAT & 1 - Respondent(s)**

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**Appearance :**
MS SEJAL K MANDAVIA for Petitioner(s) : 1 - 2.
MR SIRAJ GORI AGP for Respondent(s) : 1,
MR PRANAV V SHAH for Respondent(s) : 2,

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**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 04/08/2006**

**ORAL JUDGMENT**

1. Rule. Learned AGP Shri Gori wavies service of rule on behalf of respondent no.1 and learned advocate Shri Pranav Shah for respondent no.2. At the joint request made by learned advocates appearing for the parties, this petition is taken up for final disposal today.

2. The petitioners claim pensionary benefits considering their past service put in by them in a scheme called Sarvoday Scheme.

3. Short facts leading to the present petition are that the petitioner no.1 was appointed in March, 1973 in a scheme run by the Government. Petitioner no.2 was appointed in the said scheme on 20th February, 1978. The Government decided to wind up the scheme. The question of terminating the staff employees in such scheme reached this Court and ultimately settlement was thrashed out between the parties. Eventually, therefore, the petitioners and other similarly situated employees were engaged in the Panchayat service. The petitioners were engaged by

the respondent no.2-Panchayat on the ex-cadre post in July 1981. In due course of time, both the petitioners were absorbed on the permanent establishment of the Panchayat. Such absorption though ordered in the year 1988 was w.e.f. 1/4/1987. The petitioner no.1 retired from panchayat service w.e.f. 30th June, 2004 and petitioner no.2 retired from panchayat service w.e.f. 31/10/2004. Both the petitioners seek pensionary benefits from the respondents counting their previous service in the Sarvoday Scheme for the purpose of pension.

4. Under identical circumstances, this Court relying on the decision of learned Single Judge of this Court had accepted such a request of similarly situated employees. Learned advocate for the petitioners placed on record a copy of the judgment dated 9/3/2006 and allied matters. It is not in dispute that facts of these petitioners are material similarly to this involved in the above mentioned group of petitions. In the said decision this Court had passed following order.

"7. In view of the above situation I find that it is not open for me to examine the legal issues arising in the present petitions as urged by the learned Assistant Government Pleader. By judicial discipline I am bound by the view of coordinate bench. There are no factual differences pointed out. It is the case of the State Government that the decisions rendered by other benches under similar situation are not appealed. In that view of the matter, respectfully following the decision of this Court in the case of **Prabhudas R. Nimavat v. State of Gujarat (supra)** and subsequent decisions, I find that the prayer of the petitioners for being granted their pensionary benefits counting the entire length of service from their inception has to be accepted. I find that the petitioners have made out a case for counting the entire length of service from their initial appointed date in Sarvodaya Scheme till their superannuation from the Panchayat service for the purpose of pensionary benefits. In the case of those petitioners who are not receiving any pension since as per the stand of the respondents they had not rendered sufficient

length of service to qualify for receiving pension, the respondents shall after calculating the entire length of service as directed herein above for the purpose of pensionary benefits, calculate and release all their pensionary benefits.

8. In case of such employees who are receiving pensionary benefits on the basis of truncated services, their pensionary benefits will be revised as per the directions herein above.

9. The above exercise shall be completed within a period of two months from the date of receipt of a copy of this order. Arrears be paid within a further period of two months thereafter.

10. Since the petitioners have agitated their grievances after retirement and had not made any grievance earlier at the time when they were being absorbed in the Panchayat service and as held by this Court in the case of **Prabhudas R. Nimavat v. State of Gujarat (supra)**, I find that the petitioners are not entitled to receive

interest on the pensionary benefits to be paid under this order.

11. Learned Advocate Shri Vora urged before this Court that the petitioners in Special Civil Application No. 8680 of 2002, Special Civil Application No. 8972 of 2002 and Special Civil Application No. 8974 of 2002 were absorbed in the Panchayat service in the year 1987 on the post lower than the post held by them till then. He submitted that such reversion should be set aside and petitioners should receive pensionary benefits and other consequential benefits on the basis of setting aside of the reversion. I am afraid said request cannot be accepted. Firstly, the petitioners accepted their absorption in the year 1987 with full consciousness that they are being absorbed on the post lower than what they held till then. They made no grievance about the same for years together. Therefore, on the basis of delay, latches and acquiescence the petitioners cannot be permitted to reopen such issues at this stage. Additionally, I find that the prayer of the petitioners cannot be accepted without full

particulars about the availability of the post in Panchayat set-up at the relevant time. Any directions at this stage without fully appreciating the availability of the post in Panchayat set up would go counter to the settled legal position that there cannot be any absorption without availability of post. On these grounds, the request of the said petitioners for setting aside their so called reversion in the year 1987 cannot be accepted.

12. In the result the petitions are allowed to the above limited extent. Rule is made absolute to the above extent. No order as to costs. Direct service permitted.”

5. In view of this, without separately indicating reasons, these petitioners are also held entitled to receive the same benefits.

6. In the result, the petition is disposed of by directing the respondents to grant pensionary benefits to the petitioners, counting the entire length of service from its inception from the initial date of appointment

in the Sarvoday Scheme till superannuation. Pension and the arrears thereof shall be paid to the petitioners as found due and payable. Such exercise shall be completed within a period of two months from the date of receipt of a copy of this order. As held by this Court in its order dated 9/3/2006 however, request for interest on such delayed payment cannot be accepted.

7. In the result, the petition is allowed to the above extent. Rule is made absolute. No costs.

(Akil Kureshi, J.)

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